

THE
PILLARS
OF
PARLIAMENT
Struck at by the Hands of
A Cambridge Doctor,
OR, A
SHORT VIEW
Of some of his Erroneous
POSITIONS,
Destructive to the Ancient
Laws & Government
OF
ENGLAND.

To which is added
The true State of the Doctor's *Error* about
the Parliament, 49 H. 3.

By *William Petyt*, of the Inner Temple, Esq;

L O N D O N,

Printed for *Tho. Simmons*, at the *Princes Arms* in
Ludgate-Street. MDCLXXXI.

THE
BILL
OF
PARLIAMENT
IN
THE
FIFTH
YEAR
OF
HIS
MAYESTY
KING
GEORGE
THE
THIRD
IN
PARLIAMENT
ASSEMBLED
FOR
SHORT
SESSIONS
OF
THE
PARLIAMENTS
OF
THE
KINGDOM
OF
ENGLAND

IN THE FIFTH YEAR OF HIS MAJESTY KING GEORGE THE THIRD

ACTED BY HIS MAJESTY IN PARLIAMENT ASSEMBLED
IN THE FIFTH YEAR OF HIS MAJESTY KING GEORGE THE THIRD

(1)

THE
PILLARS
OF
Parliament
STRUCK AT

By the HAND of
A Cambridge Doctor.

OR, A
SHORT VIEW

Of some of His

Erroneous Positions, &c.

A Bout a *Tear* and a *half* since, I did, in
a small **Treatise**, assert the Ancient
Right of the *Commons* of *England* in
Parliament : And therein maintained,

That the Commons of England, represented My Discourse
by *Knights, Citizens and Burgeses in Parlia-* pag. 1.
ment,

ment *did not begin to be an Essential part of Parliament, Anno 49 H. 3. by Rebellion.*

To which there lately came out a *pretended Full and Clear Answer* : wherein the *Author* thereof *affirms*,

Page 1.

That the Commons of England, represented by Knights, Citizens and Burgeses in Parliament, were not introduced, nor were one of the three Estates in Parliament before the 49th of H. 3.

The Dignities, Learning and Fame of the supposed *Author* of the *Book* being so great, it is but fit that the *Use, End and Scope* thereof should be better *known, and understood*, than yet it is. In order whereunto I have, for the *Publick Good*, (got time) to make a small *Abstract, or Compendium*, of some of the *Principles* which the *Answerer* hath asserted and laid down therein. Which are these following.

The

The DOCTOR'S POSITIONS.

What Interest the *Commons of England* had in the *Parliaments* of the *Saxon Times*.

T *Here are no Commons to be found in the* Pag. 10. in the Margin.
Saxon Great Councils.

Nor any thing that tends towards the Proof of Pag. 13, 14.
the Commons of those Times, to have had any
Share of making Laws in those Councils.

The Commons as at this Day known, not to Pag. 130. in the Margin.
be found amongst the Community of England in
Old Historians.

In the Norman Times.

T *Hat William the Conqueror claimed by* Pag. 35. in the Margin.
the Sword, and made an Absolute Con-
quest.

For, without doubt, there was no English- Pag. 37.
Men in the Common-Council of the whole King-
dom.

For the English had neither Estates nor For- Pag. 43.
tunes left; and therefore it could be no great
matter to them, by what Law, Right or Proprie-
ty other Men held their Estates.

William

Pag. 176.

William the Conqueror divided all the Lands in England amongst his great Followers, to hold of him.

Pag. 35, 37, 38.

The Free-men of England, being French, Flemings, Anjovins, Britains, Poictovins, and People of other Nations, who came in with the Conqueror, and to whom his Magna Charta was made; not to English-men.

Pag. 39.

Nota.

When he agrees they understood not a word of English Law or Language.

Pag. 30.

Nota.

As this is precarious, so it is certainly false and impracticable, and directly against the Domes-day-Book, and the Evidence and Testimony of the Historians and Laws of that very time.

These were the Men the only Legal Men that named, and chose Juries, and served on Juries themselves, both in the County and Hundred Courts, and dispatched all Country business under the Great Officers.

If therefore the Justiciaries, Chancellors, Earls, Sheriffs, Lords of Mannors, such as heard Causes, and gave Judgment, were Normans; if the Lawyers and Pleaders were also Normans, the Pleadings and Judgments in their several Courts must of necessity have been in that Language, and the Law also the Norman Law; otherwise they had said and done they knew not what, and judged they knew not how: especially when the Controversies were determined by Military men, Earls, Sheriffs, Lords of Mannors, &c. that understood not the English Tongue or Law: Or when the Chief Justiciary himself was a Military Man, as it often happened; and understood only the Norman Language; and 'tis hardly to be believed, these Men would give themselves the trouble of learning and understanding the English Law and Language.

Gliff. pag. 27.

Nota.

Let him prove it to save his Credit.

These were the Free-men which made such a Cry for their Liberties (as appears by Magna Charta)

Charta) most of which is only an Abatement of the Rigour, and a Relaxation of the Feudal Tenures; the rest were but only Followers, and helped to augment the Noise; they were no Law-makers, as this Gentleman (meaning me) fondly imagines. For it is not probable that those Men that had the force of the Nation, would permit Men of Small Reputation to share with them in Law-making. Those that had the Power of this and other Nations De Facto, always did give Laws, and Tax the People.

After Symon Montford Earl of Leicester and the Numerous Barons had taken Hen. 3. and Prince Edward Prisoners at the Battel of Lewes, and a New Government was framed and set up, they (Anno 49 H. 3.) sent out Writs in the King's Name unto divers Bishops, Abbots and Priors, and to such of the Noble-men as were of their own Party; to the Sheriffs of Counties, Cities, Burroughs, and the Cinque-Ports.

(a) And without doubt, as others have Conjectured before Me, the danger that Symon and his Privado's apprehended from the Concourse of the Nobility and their great Retinues, and the Example of his and the Barons Practices at Oxford, was the reason why they (Anno 49 H. 3.) altered the Ancient Usage and of their Sending, Directing, and in the King's Name Commanding the Sheriffs of each County, the Cities and Burroughs, to send Two Knights, Citizens and Burgeses respectively.

(b) Hence he affirms,

Proofs that the Commons (as they would have it) began by Rebellion, 49 H. 3. No-
ta. For no Man ever dream'd of such an Origine before the Doctor and his Author only.

Nota:
Why then may not the like Reason hold against the Introduction of the Commons to be first a part of Parliament by the Vigorous and Numerous Barons after the Battel of Lewes, Anno 49 H. 3. Pag. 210. They send out Writs in the King's Name to summon a Parliament.

a P. 224. Dugd. Barons, fol. 75v. col. 2. The probable cause that moved Montfort to summon this Convention.

Nota:
How could that be, when the Numerous Barons (as they say) had all things in their Power.

b Nota.
Here we have the Original, and all the Authorities and

That

Pag. 1.

That the Commons of England, represented by Knights, Citizens and Burgeſſes in Parliament, were not introduced, nor were one of the Three Eſtates in Parliament before the 49th. of H. 3.

Pag. 163. in the Margin.

For the Commons were not comprehended in the Common Univerſity.

Pag. 165.

For the Noble-men of England, and Council of the Baronage were the Community of England.

Pag. 117. in the Margin.

Barones Regni called to Parliament at the King's pleasure.

Pag. 118.

*And what King Henry, a little before his Death, begun; that is, to call ſuch Earls and Barons, **Duos Dignatus eſt**, ſuch as he pleaſed, Edward the Firſt and his Succeſſors conſtantly obſerved.*

Nota.

The Original (meaning Mr. Camden's) joyned with Matter of Author of this Faſt, upon the Conſtitution of the Houſe of Lords.

Fiſtitious

Change is

quoted by

Camden, fol-

lowed by Sir

Robert Cotton;

but ſlighted,

baſſed, and

proved evi-

dently falſe by

Mr. Selden in

his Titles of

Honour, f. 589.

590, and con-

trary to the courſe of Hiſtories and Records of thoſe Ages. † Nota. How came the

Doctör to quote Sir Robert Cotton, ſince he is expreſſly againſt him? For if what Sir Robert ſaith was true, the Commons were firſt called to Parliament by King Henry, after the Battel of Eweſham; and then, not by the Barons, nor in 49 H. 3. And ſo they began, not by Rebellion as the Doctör and his Author ſay.

fortunately

fortunately finished, in lessening the Strength and Power of his Great-Lords. And this was wrought by searching into the Regality they had usurped over their peculiar Sovereigns, and by weakening that Hand of Power which they carried in Parliaments by commanding the Services of many Knights, Citizens and Burgesses to that great Council.

Nota.

These were the Reasons why those Kings followed Montfort's pattern, to secure themselves against the Turbulent, Insolent and Seditious Practices of the Barons.

Nota. Not a Syllable of Montfort's Pattern in any of his Authors cited by him, except his own Contemporary Author.

And, as according to the Opinions of these great Antiquaries, these new Constitutions of Parliament had their Origin from the King's Authority; so from the same Authority and Time it was, that this most excellent Great Council received its Perfection, and became exactly fitted for the Government of these Nations, as it seems to be very evident from these following Records.

Nota. All derived by Camden's Author; not an Historian or any Record mentioning one word of such an Alteration, though several lived and writ in the very time.

And then the Doctor prints several Writs in the Reigns of E. 1. E. 2. and E. 3. for summoning sometimes one, sometimes more Knights, Citizens and Burgesses to such Great Councils as had no power to make Laws, but were only called upon the suddain, to give Advice and Counsel. Yet the Doctor would have these to be Parliaments, (a plain, if not a designed Error) with several dangerous Notes or In-

Nota. The Doctor fancies that the present Constitution both of Lords and Commons began, Anno 19 H. 3. and after, and was settled by E. 1. and his Successors; but proves not a tittle of the matter of fact.

Nota. The Doctor's manifest Error in making Writs of Summons to Magna Concilia to be Summons to Parliament.

rences in the Margin, as the Reader may observe, pag. 230, 231, 232, 233, 242, 243, 246, 248, 249.

Pag. 79. in the Margin. *The King and his Council judges whether and when Burgeses ought to come to Parliaments.*

Thus the Doctor infers from this Clause in the Record: *Et tunc fiat eis super hoc Justitia vocatis evocandis sine ulla fuerit.*

The Doctor's *Jani Anglo- rum facies Antiqua*, pag. 63, 64.

Nota. The Doctor, to serve his turn, fondly designs to destroy Magna Carta of H. 3. and make E. 1 live before his Father and Grandfather were born.

Nota. A convincing Argument that because the Charter of H. 3. is enrolled by *Willelmus*, Anno 25 E. 1. in his *verba*, *Henricus*, &c. Therefore it was properly his Charter, and not H. 3.

Ibid., 44.

Nota. All this is to prop up a new and mistaken Notion, that *Tinners* in *Capiti* by Military Service only made the Parliament, till 49 H. 3.

Nota.

Here the Doctor again refers to his mistaken Writs of Summons to Great Councils for Parliaments, *tempore* E. 1. E. 2. E. 3. which he hath printed, and by them would give a colour to his and his Author's marvellous change of the ancient Government of the Kingdom, Anno 49 H. 3. never found out or discovered by any before.

The Great Charter, commonly attributed to Hen. 3. and styled his Charter, was properly the Charter of E. 1. or perhaps rather his Explanation or Enlargement of that Charter of King John and H. 3.

For we find not the Great Charter, either of that, or King John's Form, in any of the Rolls, until the 25th of E. 1. And he had a greater sum of Money for confirming this Charter than H. 3. had, as 'tis recorded in the Summons to Parliament for that purpose.

In this Charter then confirmed, there is no provision made for any Summons to Great Councils, or Parliaments: And the Reason may well be, because the Constitution of Great Councils or Parliaments was lately changed from what it was in King John's time; and until the 49th of H. 3. nor perhaps was it so fixed, and peremptorily resolved on at this time (viz. 25 E. 1.) what it should exactly be for the future, as to have it

made an Article of the Charter: And to this Conclusion the frequent Variations of Summons to Great Councils for Parliaments, *tempore* E. 1. E. 2. E. 3. which he hath printed, and by them would give a colour to his and his Author's marvellous change of the ancient Government of the Kingdom, Anno 49 H. 3. never found out or discovered by any before.

Parliament in those times do give a probable Confirmation.

Thus far our Doctor.

Nullus Erranti Terminus.

But I will not say with him, that here are any Aery Ambuscades, Whimsies, Warbellous Noncence, Gross Ignorance of Histories and Records, admirable and idle fancies, and a Troop more of such gentle Expressions, which our Answerer hath been pleased to give that ingenious Gentleman, Mr. Atwood of Grays-Inn, and my self. All strong Arguments and high Civilities, scarce well becoming the Doctor in all his eminent Qualifications.

Author of *Jani Anglorum Facies Nova.*

But to come to

The True State of the Doctor and his Author's Error about the Parliament, 49 H. 3.

After Matthew Paris, and Rishanger his Continuer, had given them an Account of the Wars between H. 3. and his great Barons; and that at the Battel at Lewes, Anno 48. of that King, he and Prince Edward were taken Prisoners by Symon Montfort, Earl of Leicester (General for the Barons) In the Year

Rat. Clam. 49
H. 3. in Schedula.

following, which was 49 *H. 3.* they meet with a *Schedule* affixed to the close Roll ; wherein there are *Writs of Summons* entred for calling Two *Knights* for each County ; Two *Citizens*, Two *Burgesses* for every *City and Borough*, and Two *Barons* for every of the *Cinque-Ports*, to meet in a *Parliament* at *London* in the *Ostaves* of *St. Hillary*. What to do ?

Dugdale's Origines Juridicales, fol. 18. col. 1.

Nobiscum ac cum prædictis Prelatis, & magnatibus nostris, quos ibidem vocari fecimus super præmissis tractaturi, atque Consilium impensuri. To treat with him the said King, and with the Prelates and Great Men of the Land, touching the Premises, and to give their Advice.

Page. 231.

Now because this *Writ of Summons* falls, as the Doctor saith, in the *Nick* of time with the *Historian*, when the *King* and *Prince* were in custody of *Symon Montfort*, He and his Author will needs thereupon *nick* the *House of Commons*; and have this *Summons* to be the very **first and Original** *Writ of Summons* to *Parliament*, that ever was of this nature, that in this *Critical Year*, at this very time, there began a wonderful *Change*, and a marvellous *Alteration* of the ancient Form of our *English Parliaments*; and that before the *Commons* were never any part thereof; but then had their *Origine* and *Beginning* to be so by this **Rebellion**.

When as,

1. If that *Roll* had been *lost*, as all the *Parliament-Rolls* of those times are, it cannot appear that there were any *Summons* to *Parliament*,

ment, either to the *Lords Spiritual*, or *Temporal*, Dugdale's *O-*
or Commons, till 22 and 23 *E. 1.* thirty Years af- *rigines Juris.*
 ter 49 *H. 3.* though it is evident and certain, *fol. 18.*
 both from the printed *Books and Records*, there *But to point out*
 were above fourteen *Parliaments* in the interim. *who they were*
 And our Doctor himself and his Author agree, *(viz. Barones*
 that both *Lords and Commons* were present and *Majores)* *that*
Parties in the Parliament, Anno 52 *H. 3.* at *had their first*
Marlborough, three Years after 49 *H. 3.* and al- *Rise by Writs*
 so in the third Year of *E. 1.* (which was eleven *of Summons,*
 Years after 49 *H. 3.*) at a Parliament at *West-* *until 21 E. 1.*
minster; though there are no Writs of Sum- *and afterward,*
 mons; either of the *Lords or Commons*, nor *possess my skill,*
 any *Rolls* yet found out of those *Parliaments.* *there being no*
that doth make
mention of them
till then, except
that of 49 H.
3. Dugdale's

Prof. to his Baronagium Angliz, Tom. 1. The Doctor, pag. 245.

2. Neither do their own *Historians* whom *Nota.*
 they make use of, nor *Matthew Westminster*, According to
 whom the Doctor cites too, who writ in the *the Doctor,*
 Reign of *E. 1.* Son to *H. 3.* and who particu- *Mr. Camden*
 larly gives an Account also of those *Wars*, nor *and his Au-*
 any *Historiographer* or *Lawyer*, nor any *Re-* *author speaks*
cord of that or succeeding *Ages*, ever mention *not any thing*
one word of any such *Change* or *Revoluti-* *of the Com-*
mons; but only
of the Lords
and their Peers.
 on in 49 *H. 3.* as our Doctor, and
 his single Author by **tacking**
 and **patching** their *Historian*
 and *Writs* together, have inferred
 and maintained in their *Books.* Be-
 sides the **form** of *Acts* of *Parlia-*
ment, and *Expressions* both in *Hi-*
storians and *Records*, are the same both before
 and after 49 *H. 3.* and in the Reigns of *E. 1.*
E. 2. and *E. 3.*

Nota. The Doctor and his
 Author having tack'd and
 patch'd together the *Histori-*
an, and *Writs* of *Summons* to
 a Parliament, 49 *H. 3.* is their
 only Evidence that the *Com-*
ment begun by *Rebellion* in that
 very Year.

Not-

Nota, These Arguments, Proofs and Reasons, besides many more, the Doctor hath unfairly concealed from his Readers; yet he hath published to the World his full and clear Answer to my Book, and particularly to the eighth and ninth Arguments, wherein these Authorities are urged: the Doctor gives this Answer in these very words, p. 143. His eighth and ninth Arguments, also his first and second Observations upon the whole matter, have nothing in them worth a serious Consideration.

In the Northern Kingdoms, Adamus Bremenensis saith, that the Bishops, after the People received Christianity, were received into their Publick Councils. And Loccenius reckons up, among the several Estates, the Bishops, Nobles, Knights and Deputies of the Country and Cities. The learned Author of The Grand Questions, pag. 11.

Notwithstanding all which, and that the Doctor well knew that the *Citizens and Burgeses* were a *Constituent Part of the Parliament in Ireland, Anno 38 H. 3.* which was eleven Years before 49 H. 3. as I proved in my Book, p. 71. And also by way of Comparison, p. 79. That the *Cities, Great Towns and Burroughs*, 1. Of France. 2. Spain. 3. Portugal. 4. Denmark. 5. Sweden. And 6. Scotland, have from time *immemorable*, both *de jure* and *de facto*, had their *Delegates* or *Representatives* in the *General Councils*, or, in our present Dialect, *Parliaments*. So that it might seem very strange, that when the *Cities and Burroughs* in all the *Kingdoms of Europe*, were *ab antiquis temporibus*, even in the time *coeval* with their *Government*, an essential part of their *Common-Councils*, or *Parliaments*; that *England*, of all the *European World*, should not be under the same *Constitution* before 49 H. 3.

Yet the Doctor and his Author by all their *Art and Skill* have toiled and laboured to swim against the *Stream* of so great a *Torrent* of *Reasons and Testimonies*.

To which, in convenient time, shall be added many more *Authorities*, which are first to be carefully examined, and cannot be done in so short a time, together with a *Civil and Moderate*

Moderate Reply to the Doctor's Answer; as well on the one hand to acquit my self from the real Passion of our Doctor, to say no worse, though common Prudence might have obliged him to more sober Considerations; as on the other, to vindicate and assert the Honour of our English Nation and Parliaments, against his and his Author's ill-grounded Notions. Which, if true, I must agree that the General Understanding and Judgment, as well of the Kings of England, as of the whole English Nation, and all Foreign Writers for so many Centuries of Years, have been marvellously abused and imposed upon, especially King James and His late Majesty: Who tell us,

1. That not only the *Regal Authority*, but *King James's the People's Security of Lands, Livings and Privileges were preserved and maintained by the first Speech to his first Parliament in England. Ancient Fundamental Laws, Privileges and Customs of this Realm: and that by the abolishing Pulton's Stat. 1 Jac. 1. c. 3. f. 1157. or altering of them, it was impossible but that present Confusion will fall upon the whole State and Frame of this Kingdom.*

2. The **Law** is the *Inheritance of every Subject, and the only Security he can have for his Life or Estate; and the which being neglected or disesteemed (under what specious shew soever) a great measure of Infelicity, if not an irreparable Confusion, must without doubt fall upon them.* *King Charles the First's Declaration to all his loving Subjects, published with the Advice of his Privy Council. Royal Collections of Declarations, p. 28, 29.*

Lastly, I will for the present give but five or six **Instances**, that the *Commons of England, as now distinguished from the great Lords, were an essential part of the General Councils or Parliaments before 49 H. 3.*

1. Bra-

Bracton, lib. i. cap. 1. fol. 1.

1. Bracton, a Grave and Learned Judge, who flourished in the time of H. 3. and an Author beyond the Answerer's Exception, after he had declared to Posterity that he had bent his mind *ad vetera Judicia perscrutanda diligenter, non sine vigiliis & labore*; and whatsoever he found *Nota dignum*, he reduced *In unam summam perpetuæ memoriæ commendandam*: declares the Rule, how Laws were made, not in his own only, but in Ages before.

This Authority the Doctor took no notice of in my Book.

Cum Legis vigorem habeat, quicquid de Consilio & de Consensu Magnatum & Reipublicæ communi spontione, Autoritate Regis sive principis precedente jure fuerit definitum & approbatum.

That ~~tha~~ that both the Force and Power of a Law, which shall be justly declared and approved of by the Council and Consent of the Great Men, and by the General Agreement of the Commonwealth, the Authority of the King preceding.

Rast. Stat. 9 H. 3. fol. 1. 3. id. 12 E. 4. c. 7. It is called, The Laudable Statute of Magna Charta.

2. The Statute of Magna Charta was made and confirmed in Parliament, 9 H. 3. (which was thirty nine Years before 49 H. 3.)

as is evident by these Authorities, which say that It was made.

Regist. fol. 175.

Rot. Stat. 25. E. 1. m. 38.

Royaume, en temps le Roy Henry nostre Pere.

Rot. Parl. 15 E. 3. num. 50. dor.

Enprimer est accorde & assentu

que la franchise de saint Eglise

& la Grand Chartre & la Chartre de la Foreste & les autres estatutz faitz per nostre Seignior le Roy & ses progenitors piers & la Comune de la terre per comune profit du people soient fermement gardez & maintenez en touz pointz. Rast. Stat. de An. 15 E. 3. c. 1. f. 82. It is accorded and assented that the Franchise of Holy Church, and the great Charter, and the Charter of the Forest, and the other Statutes made by our sovereign Lord the King, and his Progenitors, Peers and the Commons of the Land, in the common profit of the People, be firmly kept and maintained in all Points. Rast. stat. 12 E. 4. c. 7. The Laudable Statute of Magna Charta, which Statute was made in the great Wealt of all this Land; and in affirmation of the said Statute of the said great Charter, divers Statutes have been after wards made and ordained. 1. By

1. De Communi Consilio Regni.

2. Per Comune assent de tut le

3. Per Le Roy, Piers & Commune de la Terre.